Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Villaraigosa Analyst: Jeani Brent Bill Number: AB 1080

Related Bills: None Telephone: 845-3410 Introduced Date: 02/25/1999

Attorney: Doug Bramhall Sponsor:

SUBJECT: Community Investment Credit and Neighborhood Assistance Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow two tax credits:

1. For an unspecified amount to an owner of a community facility, as defined, or its legal successors, or assigns.

2. For 50% of the amount contributed by any taxpayer to an eligible community development corporation.

EFFECTIVE DATE

This bill would be operative for taxable or income years beginning on or after January 1, 1999.

SPECIFIC FINDINGS

Existing state law provides various tax credits that are designed to provide tax relief for taxpayers who must incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research expenses credits).

Existing state law allows employers a tax credit, known as the Employer Child Care Program Credit, equal to 30% of the cost paid or incurred for (1) establishing a child care program or constructing a child care facility in California to be used by their employees' children and (2) contributing to child care information and referral services. Building owners also are allowed a credit equal to 30% of their costs to establish a child care program or facility to be used by their tenants' employees' children. The amount of the credit is limited to $50,000, even if 30% of the taxpayer's expenses exceeds $50,000, but to the extent that the allowed credit cannot be used, a credit carryover is permitted. The carried-over amount may be added to any credit for that succeeding year, with usage still limited to $50,000.

Existing state law allows employers a tax credit, known as the Child Care Contribution credit, equal to 30% of the cost paid or incurred for contributions to a qualified care plan made on behalf of any dependent under the age of 12 of the taxpayer's California employee, but only to the extent contributions were made directly to child care programs or providers.

Board Position:			Department Director	Date
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The amount of the credit cannot exceed $360 in any year for each qualified dependent.

Existing state law allows a credit for the costs of constructing or rehabilitating low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. The credit is claimed over four years. The Tax Credit Allocation Committee can allocate a maximum of $35 million per year, plus the unused or returned credit amounts from prior or current years. This aggregate amount is increased for 1998 and 1999 to $50 million per year. Annual listings of qualified taxpayers are provided by that committee to the Franchise Tax Board.

Existing state law allows a taxpayer to claim a deduction for a charitable contribution made to a tax exempt organization, including a federal, state, or local government entity and nonprofit groups that are religious, charitable, educational, scientific, literary, or work to prevent cruelty to children or animals. A charitable contribution includes gifts to, or for the use of, tax exempt organizations.

This bill would allow two tax credits:

1. For an unspecified amount to a development sponsor of a “community facility.”

2. For 50% of the amount contributed by any taxpayer to an “eligible community development corporation.”

Facility Credit

The California Tax Credit Allocation Committee (the committee) would allocate to any development sponsor the amount of credit the committee determines, based on the facility’s need for economic feasibility and other unspecified requirements that would be established by the committee.

The maximum annual aggregate amount of this credit the committee could allocate would be $35 million.

“Community facility” would be defined as a child care facility, charter school, health clinic, or other similar facility identified and approved by the committee.

“Development sponsor” would be defined as the owner of a community facility for which a credit is requested, its legal successors, or assigns.

If the taxpayer could not use the entire credit in the year claimed, the excess credit amount could be carried over for an unlimited number of years until exhausted.

Contribution Credit

The committee would award tax credit vouchers to “eligible community development corporations.” The vouchers would equal 50% of the amount contributed to the corporations. Those corporations then could provide the voucher to any contributing taxpayer or taxpayers that may claim the credit pursuant to the terms of the voucher.

The maximum annual aggregate amount of this credit the committee could allocate would be $15 million.
“Eligible community development corporation” would be defined as community-based, nonprofit organizations that sponsor, develop, or manage any affordable housing community project or program that primarily benefits low- and moderate-income persons, families, or geographic areas. Under the definition of “person” contained in the PITL and the B&CTL, this credit would apply to any individual, fiduciary, partnership, corporation, association, business trust, trustee, receiver, executor, administrator, or assignee.

If the taxpayer could not use the entire credit in the year claimed, the excess credit amount could be carried over for an unlimited number of years until exhausted.

Policy Considerations

This bill raises the following policy considerations:

1. Unlike most other credits, the facility credit under this bill would not be associated with any particular expense or contribution by the facility owner; instead, the credit would be based on some undefined economic need or other requirements. Thus, unlike most credits, facility owners would not have to incur any expenses to get the credit, such as building a new facility or leasing property. Direct grants for community facilities might be a simpler method of achieving the desired goal. Further, no standards are established for weighing the merits of competing facilities.

2. Conflicting tax policies come into play whenever a credit is provided for an expense item for which preferential treatment already is allowed in the form of an expense deduction or depreciation deduction. The contribution credit would have the effect of providing a double benefit for the contribution because the contributing taxpayer also would be allowed a deduction for the contribution to a nonprofit organization. On the other hand, making an adjustment to reduce basis in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general conformity policy. In the case of a one-time expense deduction however, the reduction of that expense would not create an ongoing difference.

3. The facility credit does not limit the amount of credit that may be awarded to each facility. Thus, it is possible that the entire $35 million annual amount could be awarded to a relatively small number of facilities.

4. The contribution credit does not limit the amount of contribution by any one taxpayer that may qualify for the credit. Thus, it is possible that the entire $15 million annual amount could be awarded to a relatively small number of taxpayers.

5. This bill does not specify a repeal date or limit the number of years for the carryover. Credits typically are enacted with a repeal date to allow the Legislature to review their effectiveness. However, once a repeal date has been added and the unlimited credit carryover is allowed, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover limit since experience shows credits are typically used within eight years of being earned.

Implementation Considerations

This bill raises the following implementation considerations:

1. Under the contribution credit, it is unclear whether the fact that the committee awards a credit voucher necessarily would mean that a taxpayer may claim that credit. The ambiguity arises because the committee would not provide the contributing taxpayer with the voucher, but rather would provide the voucher to the eligible community development corporation, which then may, at its discretion, provide the voucher to the contributing taxpayer. Thus, while the committee may award credit vouchers, the corporation may choose not to provide a voucher to all contributing taxpayers.

2. The bill leaves unclear what would happen to credit vouchers that were awarded to eligible corporations in one year, but not provided to taxpayers in that year or perhaps not provided in any year. Further, this bill leaves unclear whether any unallocated credit from a prior year could be added to the total amount allocable in the next year.

3. Under the contribution credit, the bill allows the credit for "50% of the amount contributed. . . . pursuant to a voucher," but does not clearly specify, as in the facility credit, that the actual amount for which the contribution credit may be claimed is limited to the amount actually specified on the voucher. It would be easier for the department to administer this credit if the 50% limitation were instead inserted into the general voucher requirements, and the amount of contribution credit that the taxpayer was entitled to claim was clearly limited to the amount specified on the voucher itself.

4. The definition of “development sponsor” uses the terms “legal successors” and “assigns,” but does not define those terms. The lack of definitions could lead to varying interpretations, which then could lead to disputes between taxpayers and the department.

5. The term “economic feasibility” is not defined. The lack of definition leaves unclear what standard would be used to establish economic feasibility sufficient for the tax credit.

6. The definition in the contribution credit of “eligible community development corporation” is vague. Specifically, the terms used in the definition, such as “sponsor,” “develop,” “manage,” “affordable housing,” “community project,” “low- and moderate-income,” and “geographic areas” are not defined. The lack of definitions could lead to varying interpretations, which could then lead to disputes between taxpayers and the department.

7. Neither the facility credit nor the contribution credit would require the taxpayer to retain documentation to demonstrate the taxpayer's eligibility for the credit. Without this documentation, it may be difficult for the department to verify whether the taxpayer is allowed the credit and the amount of the allowable credit.

8. Generally when credits are allocated by a government entity, the credit provisions require that government entity to provide the department with an annual list of taxpayers to whom the credit was allocated. This bill would not require the committee to provide an annual list to the department.

FISCAL IMPACT

Departmental Costs

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

Tax Revenue Estimate

Based on limited data and assumptions discussed below, this bill would result in the following order of magnitude revenue losses.

Estimated Revenue Impact of AB 1080 As Introduced 2/25/99 [$ In Millions]			
Tax Credit	1999-00	2000-01	2001-02
Facility Credit	($2)	($4)	($5)
Contribution Credit	($2)	($5)	($8)
TOTAL	($4)	($9)	($13)

The bill would be effective for taxable and income years beginning on or after January 1, 1999, with enactment assumed after June 30.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

Aggregate credits actually allocated each year and amounts applied to reduce tax liabilities would determine the revenue impact of this bill. Based on prior experience for the low-income housing credit, revenue losses from applied tax credits for initial years would be significantly less than authorized allocations.

With respect to the facility tax credit, it is assumed credits would be allocated at the following rates over the initial three years: 5%, 10%, and 15%. It is assumed that these credits would be applied to reduce tax liabilities in the year allocated.

By projecting annually increasing contributions to eligible community development corporations, a rate of allocation for the contribution credit was established for the initial three years of 15%, 30%, and 50%. Assumed percentages for this credit are higher because of the broader scope of community assistance programs, income groups, and geographical areas. It is assumed that any credit vouchers awarded to eligible community development corporations would be passed on to taxpayers and credits would be applied to reduce tax liabilities in the year allocated.

These projections assume that tax credits can be allocated to taxpayers before actual completion of projects. As broadly defined in the bill, more than 200 community development corporations exist throughout the state. These corporations are tax-exempt, non-profit corporations, which typically invest in community revitalization to improve the quality of life for the communities served. Community development corporations often partner with a mix of for-profit companies and government agencies.

BOARD POSITION

Pending.